

8/8/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 21  
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re CurtCo Freedom Group, L.L.C.<sup>1</sup>

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Serial No. 75/351,170

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Steven J. Nataupsky and Tirzah Abe Lowe of Knobbe,  
Martens, Olson & Bear for Freedom technology Media Group,  
Inc.

Andrew J. Bentzmilller, Trademark Examining Attorney, Law  
Office 113 (Meryl Hershkowitz, Managing Attorney).

Before Hairston, Walters and Holtzman, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Freedom Technology Media Group, Inc. has filed an  
application to register the mark GEEK for "magazines for  
general circulation."<sup>2</sup>

The Trademark Examining Attorney has finally refused  
registration under Section 2(d) of the Trademark Act, 15

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<sup>1</sup> Applicant's filings include headings indicating that applicant may have assigned the mark to another entity. However, the USPTO assignment records do not indicate any change in ownership.

<sup>2</sup> Serial No. 75/351,170, in International Class 16, filed September 3, 1997, based on an allegation of a bona fide intention to use the mark in commerce.

U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark GEEKGIRL, shown below, previously registered for "online electronic publication of books, magazines, treatises and articles featuring entertainment, technology and feminist issues," in International Class 42, and "electronic publications, namely, books, magazines, treatises and articles featuring entertainment, technology and feminist issues, recorded on CD-ROMs, optical disks and computer software, in International Class 9,<sup>3</sup> that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

geekgirl

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of

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<sup>3</sup> Registration No. 2,163,105 issued June 9, 1998, to Rosie Cross.

confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Considering, first, the marks, the Examining Attorney contends that the GEEK portion of the registered mark is dominant; that the GIRL portion of the registered mark has a suggestive connotation in connection with the feminist content of some of registrant's identified publications; and that the marks are, thus, substantially similar.

On the other hand, applicant contends that GIRL is no less dominant than GEEK in registrant's mark; that the addition of the word GIRL to the word GEEK is sufficient to distinguish registrant's mark from applicant's mark both visually and aurally; and that the word GIRL is an important part of registrant's mark because "[t]he popular notion of a 'geek' generally involves a male who

is overly involved with computers, math or science."<sup>4</sup>

Applicant provides no evidentiary support for its conjecture about the connotation of the term "geek."

To determine whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison. Rather, the question is whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than

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<sup>4</sup> Applicant states the following:

Although traditionally used in a derogatory manner, recently, people have begun to consider "geek" a positive word, indicating prowess in the computer field and pride in one's nonconformity. While there are many talented women in the computer field, the industry for the most part consists of men. More men tend to be engaged in advanced computer activities than women. Due to the large male majority, the stereotype of a computer geek is one of a male individual ...

another feature, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applicant's mark consists solely of the word "geek" which is identical to the first portion of the registered mark. The stylization of the registered mark is minimal and it is a negligible aspect of the commercial impression of that mark.

We take judicial notice of the definition in *The American Heritage Dictionary of the English Language*, 4<sup>th</sup> ed., 2000, of "geek" as "1.a. A person regarded as foolish, inept, or clumsy. b. A person who is single-minded or accomplished in scientific or technical pursuits but is felt to be socially inept." In view of this definition, the term "geek" is at most slightly suggestive of what may be a subset of the general population to whom both applicant's and registrant's publications are marketed.<sup>5</sup> The term "girl" in

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<sup>5</sup> The definition is clearly not limited by gender. Further, it is problematic to define "geeks" as a specific subset of the consumers to whom these goods may be marketed, because it is unclear from the definition of "geek" whether a person so described by others would describe himself or herself as a "geek."

registrant's mark is, as the Examining Attorney states, suggestive of the feminist subject matter of some of registrant's identified goods. Considering the registered mark in its entirety, GEEKGIRL, is likely to be perceived as connoting a particular type of geek who is female. Thus, we find the connotations of the two marks to be related, the appearance and sound of the two marks to be similar, and the overall commercial impressions of the two marks to be substantially similar.

Turning to the goods and services, the Examining Attorney contends that applicant's magazines for general circulation are not limited as to subject matter and, thus, encompass magazines featuring articles on the topics specified in the registration, such as entertainment, technology and feminist issues; that registrant's goods recorded on CD-ROM, optical disks and computer software are likely to be sold in the same types of retail stores as applicant's magazines, for example, bookstores; and that printed and online publications are commonly offered under the same marks by the same parties. In support of this latter statement, the Examining Attorney submitted copies of third-party

registrations which cover a number of differing goods and/or services, and which are based on use in commerce.<sup>6</sup>

Applicant contends that its paper publication is significantly different from registrant's electronic goods and services, noting that "electronic media is interactive and often involves substantial programming and computer skills." Applicant submitted a printout of excerpts from registrant's website and contends that "the commercial impression of the website is very different from that of a printed magazine for general circulation."

The question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d

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<sup>6</sup>Although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, third-party registrations may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

We agree with the Examining Attorney that, based on the identifications of goods and services, applicant's magazines for general circulation are sufficiently related to registrant's goods and services as identified in the registration that, if identified by substantially similar marks, confusion as to source is likely. Applicant's arguments to the contrary are not persuasive. Applicant's goods are broadly defined and, thus, are likely to encompass the same consumers of registrant's goods and services. The record contains ample evidence

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demonstrating that the goods and services at issue herein can come from the same source and be identified by the same trademark or service mark. Applicant's statement that electronic media "involves substantial programming and computer skills" is unsupported and unlikely. In today's electronic world, the general consumer is likely to own or have access to a computer and, once on the Internet web site of an electronic publication, or once a CD-ROM or software publication is downloaded, reading that publication requires only rudimentary computer skills and no programming skills.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, GEEK, and registrant's mark, GEEKGIRL, in stylized form, their contemporaneous use on the closely related goods and services involved in this case is likely to cause confusion as to the source or sponsorship of such goods and services.

*Decision:* The refusal under Section 2(d) of the Act is affirmed.